



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2019-0541; FRL-10012-17-Region 9]

#### **Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Phoenix-Mesa, Arizona; Correcting amendment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting amendment.

**SUMMARY:** On June 2, 2020, the Environmental Protection Agency (EPA) issued a final rule entitled “Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Phoenix-Mesa, Arizona.” That publication inadvertently omitted from the regulatory text the disapproval of the portion of the “MAG 2017 Eight-Hour Ozone Moderate Area Plan for the Maricopa Nonattainment Area (December 2016)” (“MAG 2017 Ozone Plan”) that addresses the requirements for contingency measures for failure to attain or to make reasonable further progress (RFP). This document corrects this error in the regulatory text.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0541. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Nancy Levin, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Phone: (415) 972-3848 or by email at [levin.nancy@epa.gov](mailto:levin.nancy@epa.gov).

**SUPPLEMENTARY INFORMATION:** On June 2, 2020, the Environmental Protection Agency (EPA) issued a final rule entitled “Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Phoenix-Mesa, Arizona.” That publication inadvertently omitted from the regulatory text the disapproval of the portion of the MAG 2017 Ozone Plan that addresses the requirements for contingency measures for failure to attain or to make RFP. This action corrects the omission in Section 52.120 table 1.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period, and this action is merely correcting a minor typographical error in the rule text. Further, this action is consistent with the purpose and rationale of the final rule, which is corrected herein. Because this action does not change the EPA's analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication “as otherwise provided by the

agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This action merely corrects a typographical error in a previous rulemaking. For these reasons, the EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

### **Statutory and Executive Order Reviews**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action is not an E.O. 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will

not impose substantial direct costs on tribal governments or preempt tribal law as specified by E.O. 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by E.O. 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to E.O. 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This typographical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994). In issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of E.O. 12988 (61 FR 4729, February 7, 1996). The EPA has complied with E.O. 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure

is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA had made such a good cause finding, including the reasons therefore, and established an effective date of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR part 52 for Arizona is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2020.

John Busterud,  
Regional Administrator,  
Region IX.

For the reasons stated in the preamble, EPA corrects Part 52, Chapter I, Title 40 of the Code of Federal Regulations by making the following correcting amendments:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Subpart D – Arizona

2. In § 52.120 amend table 1 in paragraph (e), under the heading “Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas,” by removing the entry reading “MAG 2017 Eight-Hour Ozone Moderate Area Plan for the Maricopa Nonattainment Area (December 2016)”, and adding in its place in the table, an entry for “MAG 2017 Eight-Hour Ozone Moderate Area Plan for the Maricopa Nonattainment Area (December 2016) and appendices, excluding the contingency measure element” to read as follows:

**§52.120 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**Table 1—EPA-Approved Non-Regulatory and Quasi-Regulatory Measures (Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively)<sup>1</sup>**

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State Submittal Date	EPA Approval Date	Explanation
<b>THE STATE OF ARIZONA AIR POLLUTION CONTROL IMPLEMENTATION PLAN</b>				
* * * * *				
MAG 2017 Eight-Hour Ozone Moderate Area Plan	Phoenix-Mesa 2008 8-hour ozone	December 19, 2016	[INSERT <i>Federal Register</i> CITATION],	Adopted by the Arizona Department of

for the Maricopa Nonattainment Area (December 2016) and appendices, excluding the contingency measure element.	nonattainment area		[INSERT DATE OF PUBLICATION]	Environmental Quality by letter dated December 13, 2016. EPA approved all elements except the contingency measure element.
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<sup>1</sup> Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

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[FR Doc. 2020-15699 Filed: 7/28/2020 8:45 am; Publication Date: 7/29/2020]